

of May 1, 2001. A copy of the Notice of May 1, 2001 is submitted concurrently herewith, as well as a Petition for Extension of Time for the remaining month of the statutory period for response, a corrected Request for Continuing Examination form and a Supplemental Information Disclosure Statement.

REMARKS

The Office Action of November 7, 2000 rejected claims 1, 2, 5-13 and 15 under 35 U.S.C. 103(a) as being unpatentable over Robinson et al. taken with Mason et al. The basis for the rejection was that:

Robinson et al. ...taken with Mason et al. which teaches the addition of water-soluble vitamins and derivatives and other anti-oxidants to further improve stability, utilize therapeutic qualities and generally optimize the usefulness of the composition as a whole...Thus, where Robinson et al. is silent about additional methods of increased stability and utility of the compositions it would have been obvious to one of ordinary skill in the art to have modified Robinson et al. by using the teachings of Mason et al., which references when combined teach all of claims 1, 2, 5-13 and 15. [Office Action, p. 3]

Applicants respectfully request reconsideration of the foregoing rejection under 35 U.S.C. 103(a). Applicants respectfully submit that Robinson et al., as pointed out in applicants' April 10, 2000 submission, relates to addressing the problem of stability of retinol by utilizing a specific **water-in-silicone** composition alone, without the necessary addition of

antioxidants or other species. Robinson et al. is deficient in a number of aspects as a reference. For example, Robinson, et al. mentions N-acetyl cysteine only as an additive for the purpose of improving the appearance of the skin [Robinson, et al., page 10, lines 23-33]. Thus, Robinson, et al. does not disclose or teach compositions containing N-acetyl cysteine as a stabilizer in skin care compositions.

Furthermore, the claims of applicants' application, as currently conformed, require the presence of other oxygen-labile species in the compositions of the invention when an oil-soluble antioxidant is retinol. Robinson, et al., therefore, would not anticipate the claims as amended, as it does not disclose or suggest the combination of retinol, additional oxygen-labile species and a stabilizer.

Applicants also respectfully note that the Robinson, et al. reference teaches away from using antioxidants in compositions containing retinol:

One attempt at improving the oxidative stability of retinoid-containing water-in-oil emulsions involves the use of antioxidants in combination with the retinoid. These antioxidants are especially useful when used in combination with highly oxidation-sensitive retinoids such as retinol. Although antioxidants would seem to improve oxidative stability of certain retinoids in these emulsion systems, and even permit the use of retinol in a water-in-silicone emulsion system, these added materials can increase raw material costs and introduce additional chemical and physical

compatibility issues. [Robinson, et al., p. 2, l. 1-9]
(emphasis added)

As the Office Action of November 7, 2000 points out, Robinson et al. is "silent about additional methods of increased stability and utility of the compositions" [Office Action, p. 3]. Applicants respectfully submit that the cited Mason et al. reference does not remedy the deficiencies of Robinson et al. in directing one of ordinary skill in the art toward the compositions and methods of applicants' invention.

Rather, Mason et al. relates to the use of N-acetylcysteine in water-in-silicone emulsions similar to those described in Robinson et al. for lowering the incidence of malodor development [Mason et al, col. 1, l. 6-10]. While Mason et al. has a substantial section devoted to additional components for inclusion in the described compositions, which is relied upon in the Office Action, it mentions literally scores of potential compounds that can be utilized in such water-in-silicone emulsions, including zinc salts, sunscreens, artificial tanning agents, skin lightening agents, and other additional components. However, none of the description therein specifically recognizes or suggests the compositions or methods of applicants' invention.

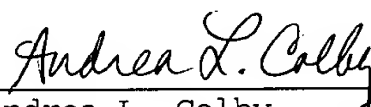
While Mason et al. does mention water-soluble vitamins at col. 11, l. 66, it does not refer to oil-soluble vitamins.

Retinoids are oil-soluble vitamins. Mason et al. nowhere suggests a reason that NAC would be expected to be able to stabilize such oil-soluble vitamins, particularly in view of NAC's own water solubility properties.

Thus, applicants respectfully submit that Mason et al. does not remedy the deficiencies of Robinson et al. in rendering obvious the claims of applicants' patent application. Neither together nor separately would the cited references lead one of ordinary skill in the art to the method or compositions of applicants' invention.

Applicants respectfully request reconsideration of the rejections set forth in the Office Action of November 7, 2000 in light of the foregoing amendments and discussion. An early allowance is earnestly solicited.

Respectfully submitted,


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June 1, 2001



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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EXAMINER

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MAY 09 2001

ART UNIT

PAPER NUMBER

J & J PAT. DKT SECTION

1653
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NOTICE OF IMPROPER REQUEST FOR CONTINUED EXAMINATION (RCE)

The request for continued examination (RCE) under 37 CFR 1.114 filed on 4/06/01 is improper for reason(s) indicated below:

- ☐ 1. Continued examination under 37 CFR 1.114 does not apply to an application for a design patent. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d).
- ☐ 2. Continued examination under 37 CFR 1.114 does not apply to an application that was filed before June 8, 1995. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d).
- ☐ 3. Continued examination under 37 CFR 1.114 does not apply to an application unless prosecution in the application is closed.
- ☐ 4. The request was not filed before payment of the issue fee, and no petition under 37 CFR 1.313 was granted. If this application has not yet issued as a patent, applicant may wish to consider filing either a petition under 37 CFR 1.313 to withdraw this application from issue, or a continuing application under 37 CFR 1.53(b).
- ☐ 5. The request was not filed before abandonment of the application. The application was abandoned, or proceedings terminated on _____. Applicant may wish to consider filing a petition under 37 CFR 1.137 to revive this abandoned application.
- ☐ 6. The request was not accompanied by the fee set forth in 37 CFR 1.17(e) as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.
- ☒ 7. The request was not accompanied by a submission as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.

A copy of this notice MUST be returned with any reply.

Direct the reply and any questions about this notice to:

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